

## **Ad-hoc sec. 40(a)(ia) disallowance made as books didn't show true state of affairs on job charges paid to affiliate**

**Summary – The Ahmedabad ITAT in a recent case of Amrut Textiles., (the Assessee) held that where assessee's books of account did not reflect correct state of affairs in respect of job charges paid to sister concern without deducting tax at source, an ad hoc disallowance of Rs. 20 lakh was to be made by invoking provisions of section 194C to meet ends of justice**

### **Facts**

- The assessee was engaged in the manufacturing of grey cloth. In the earlier years, the assessee was getting the work of weaving done from sister concerns for which it was paying job work charges and also deducting the TDS under section 194C.
- However, the assessee submitted that it was reimbursing the expenses to the sister concerns and on the said reimbursement, the provisions of TDS were not applicable and, therefore, no TDS was deducted.
- The Assessing Officer noted that in year under consideration, only change from immediate preceding year was that the assessee had taken the machinery and other facilities of the sister concern on rent (which was not in the case of immediate preceding year) but all the expenses which were incurred in the current year were similar to that of earlier years and that there was no change in the actual working.
- The Assessing Officer, thus, considered the entire expenses to be liable for TDS deduction and on account of non-deduction of TDS, applied the provisions of section 40(a)(ia) for making the disallowance.
- The Commissioner (Appeals) confirmed disallowance made by the Assessing Officer.
- On second appeal:

### **Held**

- It is a fact that the expenses have been incurred on various heads, the exact detail of which has not been placed on record. Further it is also a fact that the incurring of expenses have not been doubted by the Assessing Officer nor has he rejected the books of account of the assessee. The Assessing Officer has only proceeded on the basis of presumption that the entire expenses are liable for TDS deduction. In this regard it is opined that the entire expenses cannot be considered for disallowance under section 40(a)(ia) on the basis of presumption only as there was no material brought on record by the revenue to suggest that the change in the policy of assessee in taking machines and other facilities of the sister concern on rent was fictitious and, therefore, the addition made under section 40(a)(ia) is deleted.
- Further, as per the assessee if the entire expenses are disallowed, the gross profit ratio would work out to more than 35 per cent as against the gross profit of 2.91 per cent shown by the assessee

which is unrealistic. Thus, considering the peculiarities and totality of the facts, it is opined that the accounts of the assessee do not reflect the correct state of affairs of the assessee and, therefore, ends of justice shall be met if the addition is made at Rs. 20 lakhs in the trading result of the assessee.

- In the result, this appeal of the assessee is partly allowed.